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November 14, 2005

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Federal Communications Commission
Office of Secretary

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Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
ATTN: ET Docket No. 04-295/RM10865

Dear Ms. Dortch:

Please find attached comments to be filed on behalf of the University of California in response to notice of proposed rule making dated October 13, 2005, in the matter of Communications Assistance for Law Enforcement Act (CALEA) and Broadband Access and Services.

Sincerely,

A. Scott Sudduth
Assistant Vice President

Enc. a/s

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NOV 14 2005

Before the
Federal Communications Commission
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of)	
)	
Communications Assistance for Law)	ET Docket No. 04-295
Enforcement Act (CALEA) and)	
Broadband Access and Services)	RM-10865
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)	FCC 05-153
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COMMENTS OF THE UNIVERSITY OF CALIFORNIA ON FURTHER NOTICE
OF PROPOSED RULEMAKING

I. Summary

The University of California ("University") submits the following comments in response to the Notice of Proposed Rulemaking dated October 13, 2005 ("NPRM"). The purpose of these comments is to support an exemption process or limited compliance category for educational entities that, like the University, have a clear record of support for law enforcement authorities and the capability and commitment to provide law enforcement assistance capabilities consistent with CALEA and the Commission's regulations.¹

II. Discussion

The University supports the goals of the Commission to re-evaluate services provided by telecommunications carriers to ensure court-ordered electronic surveillance

¹ The NPRM seeks comments relating to possible procedures that may be adopted to implement CALEA's exemption provision (CALEA section 102(8)(C)(ii)) and the appropriateness of requiring "something less than full CALEA compliance for certain classes or categories of providers," as well as the best way to impose different compliance standards. NPRM ¶¶ 2, 33. The University's comments are intended to support both a streamlined exemption process and a scaled compliance framework that would create an appropriate exemption category for educational institutions such as the University. In addition, these comments incorporate by reference the comments submitted by the "Higher Education Coalition" on this same date, which address both issues.

remains robust. However, there is no demonstrated need to bring educational institutions like the University, or the private networks that interconnect them, within the ambit of CALEA's regulatory framework because (1) the University already meets in substance the needs of law enforcement and (2) the costs of CALEA compliance would critically undermine the research, teaching and public service missions of the University. Even if the Commission maintains that higher education institutions should now become subject to CALEA, a limited compliance tier tailored to higher education's unique capacity to offer reasonable and effective assistance to law enforcement favors an incremental, phased approach to compliance.

A. Congress Did Not Intend The Communications Assistance For Law Enforcement Act (CALEA) To Apply To Universities As Private Internet Service Providers

When CALEA (47 U.S.C. Sections 1001-1010) was enacted in 1994, Congress specifically excluded from coverage information service providers, such as Internet Service Providers, for purposes of compliance with CALEA. By now suggesting through the NPRM that CALEA applies to Internet services such as those provided by the University, the original intent of CALEA may have been improperly broadened.

In enacting CALEA, Congress does not appear to have intended CALEA to reach providers of broadband Internet services such as those provided by the University (CALEA Legislative History, House Report No. 103-827 at 20.) The definition of "telecommunications carrier" does not include "persons or entities insofar as they are engaged in providing information services," such as electronic mail providers, on-line service providers, such as CompuServe, Prodigy, America-On-line or Mead Data, or Internet Service Providers. Moreover, the University – a public, not-for-profit educational institution that does not make its network facilities generally available to the

public – is not a “common carrier for hire” under CALEA section 102(8). Accordingly, any interpretation of CALEA now suggesting that CALEA specifically applies to educational entities such as the University may exceed CALEA’s scope as originally envisioned by Congress.

Thus, the University respectfully requests that the Commission review the compliance framework outlined in the original CALEA statute and consider an exemption for higher educational institutions as part of the outcome of the current NPRM.

B. The University Already Assists – And Will Continue To Assist – Law Enforcement In A Reasonable And Diligent Manner

The University enjoys an exceptional record of law enforcement support and cooperation, both in matters involving state and federal compliance. The University system includes more than 208,000 students and 121,000 faculty and staff located at ten campuses (Berkeley, Davis, Irvine, Los Angeles, Merced, Riverside, San Diego, San Francisco, Santa Cruz and Santa Barbara) and five medical centers. The University also manages three United States Department of Energy national laboratories with nearly 19,000 employees: the Lawrence Berkeley, Lawrence Livermore and Los Alamos National Laboratories. The latter two facilities were founded to serve the needs of the defense of the United States, a mission that continues today with programs that include developing responses to terrorism and homeland defense. The University also maintains its own law enforcement unit – the University of California Police Department – that is entrusted with the duty and responsibility to serve and protect the university community so that the primary mission of education, research, public service and patient care can flourish in a safe and stimulating environment. *See, e.g.,* University of California Police

Department Annual Report

(http://police.berkeley.edu/annual_report/2004/introduction/mess_from_the_coop.html).

Yet, despite the size and span of the University, it only occasionally receives subpoenas involving law enforcement activities. And requests seeking assistance with respect to electronic surveillance are virtually non-existent: the University is aware of less than a handful of state or federal subpoenas seeking electronic surveillance assistance within the last five years (the period for which a search for wiretap requests was conducted).

Still, when such requests for assistance are issued, the University responds diligently and with dispatch, using existing infrastructure and technology. The UC Information Technology Leadership Council, consisting of Chief Information Officers representing the Office of the President, the campuses, medical centers and national laboratories, provides ongoing management and oversight of the University's voice and data networks and ensures network security and electronic communications integrity. Network specialists in all University institutions are available to respond in real time to any network maintenance exigencies.² In short, the University already is in a position to expeditiously assist any law enforcement request.

There is simply no demonstrated need to extend CALEA to educational institutions such as the University, which only rarely receive requests from law

² Even before the advent of the Commission's recent rulemaking involving electronic surveillance, the Office of the President's Information Resources and Communications Department implemented programs designed to ensure the integrity and security of the University's electronic communications systems. For example, at the Office of the President, some of these programs include a network architecture assessment initiated in February 2004 that consisted of a peer-review of the OP network to recommend enhancements in the areas of security, network management and diagnostics; securing OP systems, servers and workstations in a secure Data Center environment; and a program to integrate security into all phases of application development and operation. *See generally* <http://www.ucop.edu/irc/services/itsec.html> (description of IR&C Information Security Initiative). Similar programs have been implemented at the campuses.

enforcement for electronic surveillance assistance and which already are prepared with existing infrastructure to quickly and reasonably assist law enforcement when such requests are forthcoming.

C. The Marginal Value of CALEA's Application To Higher Education Is Further Diluted By The Absence of Technological Guidance And Is Not Justified In Any Event By CALEA's Potential Costs

The need for an exemption procedure for higher education is pronounced as there is currently little guidance with respect to the extent of any necessary systemwide CALEA upgrades or even the availability of CALEA-approved upgrade technologies, even though the Commission has mandated "full compliance" by all newly-covered CALEA entities no later than May 2007.

The most glaring limitation in the proposed rulemaking is that it does not provide implementation specifications for what any affected institutions must undertake to comply. In particular, there is no guidance with respect to where CALEA-compliant devices must be deployed within the University's diverse networks; no guidance regarding the specific hardware or software technologies that must be used; and no guidance with respect to how the University must balance access with privacy assurances for those not under investigation and with privacy laws, including federal privacy laws.

To that end, even estimating the cost of "full compliance" under the revised CALEA scheme is difficult. The complexity of technologies inherent to broadband access and the unknown extent of broadband access that law enforcement may require makes estimating the cost of systemwide upgrades virtually impossible. The costs to comply with the Final Order could be excessive and burdensome. For example, replacing existing switching and router systems within the University's many networks would

likely exceed \$100 million.³ Moreover, there is no certainty that any determination of what is “reasonably achievable” would take into full consideration the costs and benefits of applying CALEA to higher education networks. In addition, there is no indication about the existence or extent of available federal compensation under CALEA for costs incurred as a result of any retrofit, despite the provision of such funding in the original CALEA legislation.

Given CALEA’s uncertainties and potential costs to higher education – especially relative to its limited benefits to law enforcement, an exemption or limited compliance mandate should be embraced by the Commission. Like many public institutions of higher education across the nation, the University currently faces declining state support. Over the last four years, cuts in state support have resulted in base budget reductions totaling nearly \$500 million, resulting in budget cuts in every area – including University instruction, research, public service, academic and administrative support, and student services. Over this same period, Central Information Technology budgets have been cut 15% on average, while the University has been required to meet growing demand for IT services and to comply with increasingly stringent governmental regulation. If higher education is not afforded a process through which to undertake CALEA compliance on at least a modified scale, the cost of compliance would further inhibit the University’s ability to fulfill its mission of teaching, research and public service and to continue as a critical engine of economic vitality for the State of California.

³ Significantly, CALEA recognizes that the greatest cost efficiency can usually be achieved by building intercept solutions into a system’s initial design prior to deployment, rather than as a retrofit. CALEA Section 109(b); 47 U.S.C. 1008(b). However, a wholesale retrofit obviously could be necessary to secure compliance under the existing compliance schedule.

D. Should CALEA Be Applied To Higher Education, The University Supports A Limited Compliance Category That Incorporates Limited Implementation Requirements, Reasonable Assistance Capability Requirements And A Modified Upgrade Schedule

In the absence of an exemption for higher education, the University supports a limited compliance category that is responsive to the costs and benefits of CALEA's extension to higher education. Such a limited category could include three components that recognize the important distinctions between higher education and research institutions on one hand, and commercial broadband service providers on the other.

First, the Commission should reaffirm that CALEA can be applied only to the public Internet gateway facilities to which the education and research institutions attach, *and not to the internal portions of any private higher education or research institution networks.*

Second, educational institutions could be asked to meet reasonable assistance capability requirements. These requirements could include:

- appointment of a senior employee responsible for ensuring that assistance is provided in accordance with the assistance capability procedures;
- defining policies and procedures in accordance with the educational institution's established processes that provide how it will accept and assist lawfully-authorized requests for surveillance;
- publishing the contact information for those campus officials obliged to be responsive to law enforcement;

- maintaining secure and accurate records of law enforcement requests and corresponding campus assistance with electronic surveillance;
- confirming compliance with the Commission and/or law enforcement on a reasonably recurring basis.

Third, to the extent any educational institution is required to obtain CALEA-compliant equipment pursuant to the revised rule, the University asks that such an upgrade or modification be installed in the normal course of any regularly-scheduled institutional upgrade program (assuming the existence of CALEA-compliant equipment), and not within the current 18-month “full compliance” mandate. Such a phase-in permits the University – a non-profit, public entity – to address technological upgrades in a careful and systematic way consistent with the University’s budget limitations and equipment depreciation schedules. Notably, Congress originally required the federal government “to pay all reasonable costs incurred by industry . . . to retrofit existing facilities to bring them into compliance with interception requirements,” CALEA Legislative History, House Report No. 103-827 at 16, and so such an upgrade program would not be inconsistent with Congress’s vision under the original CALEA legislation.

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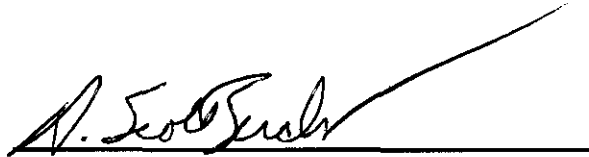
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III. Conclusion

The University looks forward to remaining a responsive and capable partner to law enforcement needs at local, state and federal levels. The University hopes the Commission remains committed to providing a reasonable avenue for the University to demonstrate its commitment through an appropriate exemption or limited exemption process.

November 14, 2005

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "A. Scott Sudduth", is written over a solid horizontal line.

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University of California, Office of the
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